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Looking to the East: The Stories of Modern Indian People and the Development of Tribal Law

Matthew L.M. Fletcher¹

For my Gram and old stories, and the Peach and new stories.

For many Indian people the east represents a new beginning. Each day the sun rises and Indian people begin new lives, with new stories and new experiences. East is the direction of young people, of newborns, and creativity. East is the direction of starting over with new and powerful energy. East is the direction of change.

Indian people—scratching and clawing, fighting and dying, sometimes silent, sometimes loud—have survived meticulous and incredible ruin at the hands of outsiders. The stories about these people are the foundation of American Indian law and policy. They are told by tribal attorneys and leaders, academics and judges, and form a great portion of the underlying basis for the rise of tribal self-determination and tribal sovereignty.

The larger story is ongoing, with many tribes running huge money-generating casinos, sophisticated and accountable environmental protection programs, and comprehensive social safety nets, while other tribes struggle to meet basic daily needs. The smaller stories, the stories of individual Indians living on or off the reservation, working or unemployed, educated or illiterate, make up the infrastructure of the remains of tribal cultures. These stories, factual or fictitious, have a great deal to add to the ongoing conversation about where Indian people will go with their newfound self-determination and tribal sovereignty. These new stories are a necessary and integral part of the future of tribal law and governance.

For Indian people to preserve their right of self-determination, their cultures, and their ways of living, they must rely upon their own customs

and traditions, whether old or new. They must restore the stories of historic sovereignty and integrate these with contemporary stories of individual Indians, and then incorporate these elements into a modern tribal law.

Part I of this article describes the state of tribal sovereignty in the early part of the new century. Tribal sovereignty is a story told for decades by tribal leaders and advocates to federal and state governments and courts. This story has led to significant political and economic gains for Indian people, but the story is getting old.

Part II draws a link between the old stories of Indian communities and the new stories of modern Indian people. While the pre-contact Indian communities relied upon storytelling to communicate important social norms, the conquest of Indian nations eviscerated that capacity. Indian people, in order to preserve the right to legal self-determination, must restore their own unique customs and traditions and incorporate those elements into modern tribal law.

Part III attempts to take four short stories about modern Indian people living in a world dominated by non-Indian culture and government, written by the renowned Spokane-Coeur d'Alene area author Sherman Alexie,² and highlight areas where new stories may inform tribal government choices as to tribal law and policy. These choices include tribal membership and cultural property.

Part IV concludes this article by arguing that tribal law and sovereignty cannot exist in the long-term without reference and a direct connection to the new stories of Indian people living today.

I. SOVEREIGNTY: THE EMPTY(ING) VESSEL

Tribal sovereignty is the calling card of tribal leaders—it has been for decades—and the invocation of tribal sovereignty has led to many successes in the courts and before the politicians.³ It used to be that a tribal attorney could stand before a federal judge with a copy of a treaty and *Williams v. Lee*,⁴ or page 122 of Felix Cohen's *Handbook of Federal Indian Law*,⁵ and

win; but any observer of modern federal Indian law can see that mere invocation of tribal sovereignty is no longer sufficient to persuade. That is not to say that tribal sovereignty is dead. Far from it. The Supreme Court recognizes tribal sovereignty, and has with relative consistency since 1959's *Williams v. Lee* where the Court held that Indian tribes have the right to "make their own laws and be ruled by them."⁶ However, the Court's definition of tribal sovereignty ends at the boundary sticks of tribal lands and with the birth certificates of tribal members.⁷

Sovereignty is an Anglo-American legal construct, and as such, that construct is limited.⁸ Audre Lorde's warning that the master's house will not be torn down with the master's tools has special relevance to American Indian law.⁹ Litigating sovereignty before the Supreme Court has been a disaster for Indian tribes for the last two decades.¹⁰ Accordingly, tribal sovereignty as a tool of Indian advocacy and leadership must be reexamined.¹¹ If tribes are to recapture the true authority to self-govern, they must move beyond sovereignty.¹²

Although Indian tribes are generally in a better position now than they have been in hundreds of years,¹³ they have not taken sufficient advantage of the space which the Court recognizes as theirs. Indians and Indian tribes must recognize that the space to make their own laws is equivalent to the right of preserving and making their own culture. Indian leaders fill some of that space from the top down with Anglo-American legal constructs that are necessary for existing in the modern era; but the law of Indian tribes, tribal law, cannot sustain itself without becoming part of the local culture. Or stated another way, tribal culture must permeate tribal law over time in order for that law to survive. Tribal law and culture are inextricably intertwined.

Tribal law and culture are collections of stories. The same stories that scholars study as snapshots of tribal culture are also stories about a tribe's law.¹⁴ Before contact with Euro-Americans, Indian stories and law changed and developed in an organic manner. After contact, and until the modern

era,¹⁵ Euro-Americans destroyed the stories at worst or prevented their development at best.¹⁶

Native American literature critics recognize on a visceral level that more Indian writing must emphasize empowerment,¹⁷ a tangent or offshoot of sovereignty.¹⁸ Indians must take control of their own development, learn the old stories, and tell new stories.¹⁹ Indian people and, as a last resort, academics can tell us the old stories. But it is new writers and leaders that must tell us the new stories, the stories that interpret the old stories for the modern era, and thereby take advantage of the space created by the invocation of tribal sovereignty.

II. TRIBAL COMMON LAW AND THE NEW STORIES

Tribal governments must seek to govern in a manner that preserves tribal cultures to the maximum extent possible. Modern federal Indian law keeps open a small window for Indian tribes to make their own laws and be governed by them.²⁰ But the focus of federal Indian policy throughout American history has been one of quashing tribal law and culture.²¹ For example, in *United States v. Clapox*, the federal district court described the purpose of Indian reservations as being “in the nature of a school, and the Indians are gathered there, under the charge of an agent, for the purpose of acquiring the habits, ideas, and aspirations which distinguish the civilized from the uncivilized man.”²² The small window of opportunity to declare one’s own laws, to determine one’s own future and governance, is the question of the next century for tribal advocates.

The notion of an Indian tribe assumes a governmental structure, however limited or simplistic, that does not often exist in reality. Before contact with European conquerors, many, if not most, Indian communities governed themselves through complex kinship relationships.²³ Indian government structures resembling modern governments today, such as hunting or war parties, formed only as necessary. However, due to centuries of treaty-making, federal Indian legislation, and policy culminating in the Indian

New Deal (1934's Indian Reorganization Act),²⁴ the dominant and exclusive Indian governance structure has become the Indian tribe.²⁵

Advocacy in favor of a tribal law that is sensitive to tribal cultures and traditions does not mean a return to pre-contact Indian community governance structures. Too much time has passed since Indian people have adopted and adapted to their tribal government structures. Nevertheless, unique tribal custom and tradition must play a part in the continued advancement of tribal governments. Indian tribes are at a critical juncture—the opening for Indian people to make their own laws and be governed by them is here.

Pre-contact, Indian community governance provided social control through a complex arrangement of interconnected relationships dependent on storytelling and mythmaking.²⁶ Elders passed down mores and other community behavioral norms to younger community members through the telling of stories.²⁷ Often these stories were tied to the community's traditional territory, such as certain landmarks.²⁸ The reservation system, the boarding schools and missionaries, and the dispossession of Indian lands guaranteed the loss of most of these stories.²⁹

Indian communities today are seeking to restore as many of the old stories as possible, but there is a need to think about new stories. The new stories depict Indian people doing good and evil in recent times, with a realistic bent concerning how Indian communities are now surrounded by a series of often hostile, alien, and dominant cultures. The old stories have translated into a form of Indian community law—the new stories should, in turn, be examined for their relevance to modern tribal law.

III. TRANSLATING THE NEW STORIES INTO TRIBAL LAW

Sherman Alexie's two most recent collections of short stories, *The Toughest Indian in the World* and *Ten Little Indians*, tell stories of old and modern Indians; Indians living both on and off the reservation; unemployed poor Indians and over-educated Indian professionals; and Indians who are

lovers and Indians who are fighters.³⁰ These stories highlight areas where new stories may inform tribal government choices as to tribal law and policy.

Many Indians in these stories go through experiences that Alexie refers to as “ceremonies.” Ceremonies are necessary for healing, for understanding, and for creation.³¹ All of this applies to the law and custom of Indian people. Alexie’s ceremonies are as simple as picking up Indians hitching on the side of the road³² or making coffee.³³ Or it could be old friends who have not seen each other for years who still remember their “secret language” when they meet again.³⁴ Another ceremony is the mild banter of an Indian couple living on a reservation.³⁵ An act of love may be a ceremony: “In his wallet, [my father] kept photographs of all his children, and pulled them out three or four times a day to examine them. He thought this small ceremony was a secret.”³⁶

The act of writing, of creating, is a ceremony: “It’s all about ceremony. As an Indian, you learn about these sacred spaces. Sometimes, when you’re lucky and prepared, you find yourself in a sacred space, and these poems come to you.”³⁷ Alexie’s urban Indian poet Harlan Atwater wrote poems as a ceremony of discovering how to be an Indian.³⁸

Like Alexie, the Indians in his stories tend to be urban Indians mostly living in Seattle. They also tend to be educated—college graduates, dropouts, or current attendees. They are poets, lawyers, politicians, and students. These characters are often Indian reservation (rez) expatriates, and their experiences are shaped by their respective stories of leaving the rez, longing for the rez, and despising the rez. These Indians are expatriates from their own communities, in the same way that time and distance has exiled all modern Indians from their traditions and customs. From these stories we can learn from analogy, or at least learn a way to learn.

This article analyzes four of Sherman Alexie’s short stories from his collections *The Toughest Indian in the World* and *Ten Little Indians*. The first story, “Class,” is the tale of an urban Indian professional, one of a rare

group of people faced with incredible internal and external conflict. However, these people can serve as a bridge to ancient tribal custom and modern tribal law. The second story, “The Search Engine,” is a modern story of tribal community membership. Membership in a tribal community is more complex than the bright-line federal definitions of “Indian”³⁹ or tribal constitutional and statutory membership rules.⁴⁰ The third story, “What I Pawn You Will Redeem,” is a modern story of cultural property. The plot of the story traces a modern tale of stolen dance regalia that serves to highlight the legal problems facing Indians and tribes seeking the return of similar property. The final story, “The Sin Eaters,” is an allegory of federal Indian policy and its real and potential impact on Indian people.

A. “Class”

Carey Vicenti, a Jicarilla Apache member, professor, and tribal judge, wrote that the return of the first wave of educated Indians back to their tribal communities was a mixed blessing.⁴¹ Young Indians left their communities at a young age and returned with four, seven, or ten years of education.⁴² Those that were successful in college and graduate or professional schools brought the ideas of the outside world into their communities unleavened by the cultural requirements of the community.⁴³ In short, their work did much to assimilate tribal legal and political structures. Indian leaders and the following waves of educated Indians returning to Indian Country, according to Professor Vicente, learned from these early mistakes, such as adopting Anglo-American law without thought as to the consequences,⁴⁴ but it is no small feat to take the Anglo-American legal and political structures and adapt them to the needs of tribal communities.

The learning curve for both those leaving and returning, and those who never left, is steep. Alexie’s story, “Class,”⁴⁵ is an allegory of this process, focusing more on the difficult and ugly portions. The main character, Edgar Joseph, is a lawyer who describes himself as “growing . . . braids since I’d graduated from law school. My hair impressed jurors but irritated judges.

Perfect.”⁴⁶ He married a non-Indian woman and, after a combination of disaster and betrayal, their relationship is on the rocks.⁴⁷ During this period, Edgar visits an Indian bar in Seattle.⁴⁸ The bartender and the customers are rough and poor in relation to Edgar, and make clear to him that he does not belong there.⁴⁹ Edgar is an alien in that place; but he agrees to fight the biggest, meanest Indian there, Junior.⁵⁰ Junior then badly beats Edgar and cuts off one of his braids.⁵¹

“Class” exemplifies a ceremony of the rejection of educated Indians from Indian communities. The urban Indian bar is a metaphor for the reservation community, often broken and disjointed. Edgar’s knowledge, his experience, and even his person has become alien to that community. Also, in a crude manner, the story is about Edgar’s rejection of his Indian community. He cut his ties by moving away, marrying outside the community, and working in a field that has no utility to his community. As a result, he cannot bring back what he has learned. His exile is complete. Junior’s desecration of Edgar’s façade of Indianness—his braids—is symbolic of the tribal community’s rejection of outsider law. Edgar’s law has nothing to say, and has no meaning for the tribal community. It is the same with outside law transplanted onto reservation communities. Without context, without solid footing, the law fails.

B. *“The Search Engine”*

Fundamental to any Indian community is the question of belonging. However, the new regime of laws imposed by the federal government requires Indian tribes to codify their community membership requirements to the extent that the community is changed into a political body (a tribe) that may be foreign to the concept of Indian community.⁵² As a result, Indian communities that once determined membership through informal community rules and norms must now follow formal, rigid membership or citizenship requirements controlled by blood quantum, lineage, and documentation processes.⁵³ People with no sense of the community, from

outside the community, are full participants, while those living within the heart of the community, living its language and ceremonies, are excluded.

Modern American Indian law is replete with anecdotes about full-blood Indians with grandparents from four different tribes who do not meet the membership requirements of any of the four tribes; Indians of communities terminated or eviscerated by American history, part of an absent or homeless tribal community; or Indians adopted out of reservation communities into far-away non-Indian families and forever lost to their original community.⁵⁴ “The Search Engine” in part is the story of the latter, a “lost bird,” according to the main character Corliss Joseph.⁵⁵

Harlan Atwater, the poet hero of the main character, wrote poetry in the 1970s as a means of recovering his Indianness—of discovering what it means to be an Indian. “I started writing poems to feel like I belonged,” Harlan said, “to feel more Indian. And I started imagining what it felt like to grow up on the reservation, to grow up like an Indian is supposed to grow up”⁵⁶ But as an Indian adopted out of his tribe and placed with a white family in an urban area, he would never know. For Harlan, “the two best, the two most honorable and loyal people in [his] life [were his] white mother and [his] white father.”⁵⁷ In the story, Harlan states that he stopped writing poetry because, “no matter what I write, a bunch of other Indians will hate it because it isn’t Indian enough, and a bunch of white people will like it because it’s Indian.”⁵⁸ In the concluding scene, he asks, “what kind of Indian does that make me?”⁵⁹

In contrast, the main character, a young Spokane Indian college student named Corliss, did grow up on the reservation as part of her Indian community.⁶⁰ She often speaks with her mother on the reservation and returns for frequent visits.⁶¹ “She knew the name of her tribe, and the name of her archaic clan, and her public Indian name, and her secret Indian name”⁶² She knows who she is and where she comes from—she fits Vine Deloria’s definition: “[A tribe] means a group of people living pretty much in the same place who know who their relatives are.”⁶³ And yet she feels

out of place as a writer, student, and poet, attending an outsider school, reading outsider literature, learning the ways of outsiders.⁶⁴ Her uncles criticize her for reading books by Catholic priests because they abused her relatives.⁶⁵

Consider a story out of the history of the Michigan Anishinaabe about Leopold Pokagon. Leopold grew up in a northern lower Michigan Ottawa community, moving to another Michigan Anishinaabe community, as was the norm of that time, to be with his spouse.⁶⁶ While as a matter of politics and blood Leopold was an Ottawa Indian, the Potawatomi community of southwestern Michigan and northern Indian accepted him, even adopted him.⁶⁷ Leopold grew to be a formidable ogema (leader) and acted as the lead negotiator during the 1833 Treaty of Chicago negotiations for what would become known as the Pokagon Band of Potawatomi Indians.⁶⁸ Indian community membership practices allowed for outsiders to become members, assuming they knew who their relatives were and met social criteria.⁶⁹ These outsiders, often blood relatives, could be adopted.⁷⁰

Compare earlier political relationships such as Leopold's to modern tribal membership practices and law. The federal government, as a general matter, imposed codified, formalized membership criteria such as blood quantum or lineage, along somewhat arbitrary lines.⁷¹ Leopold, an Ottawa (or Chippewa) with one hundred percent non-Potawatomi blood, might never become a member of the Pokagon Band according to its current constitutionalized membership criteria.⁷² The traditional ways of defining membership and belonging gave way to the newer, arbitrary, and formalized laws.

Harlan Atwater's story as a lost bird, as well as Corliss Joseph's story as a student learning from non-Indians, treats questions of tribal community membership in the modern era as a more complex question than tribal membership laws allow. It seems clear that Harlan would be able to restore his political affiliation with the modern Spokane Tribe, but that is a limited view of the whole story. Harlan's exile from his reservation community is

complete because he can never grow up there, and he can never learn what it means to be a Spokane Indian at home. He wrote poetry as a flawed way to find that meaning, but he quit when he realized it was impossible. Even if he had moved back to his community and stayed there the rest of his life, it would not have been the same as having a childhood there. Corliss, however, did spend her childhood there and will always retain that base of inner knowledge and experience, no matter how many years she spends apart from the community. She might spend decades away, but she would be hard-wired into her community forever.

Alexie's story captures this distinction, and in so doing identifies a fundamental disconnect between the tribal law of political membership and the tribal custom and tradition of family/political/community membership. Belonging is a notion that American Indian law identifies as being part of the fundamental inherent authority of tribal communities to define,⁷³ but given the long history of American Indian policy, tribes still have not responded to the disconnect between community and the forced codification of what constitutes belonging. Tribal law, however, is available to make these changes.

C. *"What You Pawn I Will Redeem"*

Professor Joseph W. Singer's recent article, "Nine-Tenths of the Law: Title, Possession & Sacred Obligations,"⁷⁴ tells of the Supreme Court's most recent decision relating to the Oneida Indian Nation's land claims in New York state.⁷⁵ Despite the fact that a 1793 statute, the Nonintercourse Act, provided that no purchase of Indian lands without the consent of Congress was valid "in law or equity,"⁷⁶ the Court held that the Oneida Indian Nation's claims to restore sovereignty over historic reservation lands purchased in 1997 and 1998 were barred by the equitable remedy of laches.⁷⁷ In large part, the story of the ultimate rejection of the tribal land claims in New York is based on the notion of "settled expectations"⁷⁸—that

enough time has passed so that the beneficiaries of the illegal land transactions are no longer culpable for the actions of their predecessors.

Alexie's story, "What You Pawn I Will Redeem,"⁷⁹ is a story about redeeming property in a manner that Anglo-American common law could not conceive. In the story, the property at issue is the dance regalia of the main character's grandmother, lost over several decades to theft and found in a pawnshop in Seattle.⁸⁰ Though Jackson Jackson (he calls himself "Jackson Squared") has never seen the regalia in person, he knows that his grandmother would sew a yellow bead into the armpit for identification purposes—and he finds the bead there.⁸¹ Jackson asks the pawnbroker for the regalia, but the pawnbroker refuses on the grounds that he paid \$1,000 for the regalia and that no police officer would believe Jackson, who is homeless.⁸² The pawnbroker makes a deal with Jackson—which is no deal at all—that he will sell the regalia to Jackson for only \$999 if he can come up with the money in one day.⁸³ The story involves Jackson's quest to raise the money in a single day.⁸⁴ He fails, returning to the pawnbroker the next day with the same amount of money with which he started—five dollars.⁸⁵ The pawnbroker, being assured by Jackson that he had worked hard for the money, gives him the regalia.⁸⁶

Postmodern legal scholars have begun the long process of identifying the legal interests underlying Anglo-American common law doctrines.⁸⁷ It is time that tribes, tribal advocates, and tribal courts do the same before adopting these common law doctrines.⁸⁸ In "What You Pawn," the law of theft and contract that would apply to the regalia of Jackson's grandmother benefits the good faith purchaser, the party investing the most capital or resources into the purchase and maintenance of the regalia. Like the owners of the land subject to the New York Indian land claims, the pawnbroker knows he has the benefit of the law. He knows the black letter law and that the application of it means he would win in court. But Jackson, perhaps, teaches a lesson about the value of what academics might call "cultural property."⁸⁹

Jackson's quest to raise the money to repurchase his grandmother's regalia is a study of his ambivalence about Anglo-American notions of property and capital. He starts with the five dollars he and his friends had on them when they saw the regalia in the pawnshop, plus twenty dollars the pawnshop owner gives him, and buys liquor with the money.⁹⁰ He talks the Real Change office into letting him have fifty papers for free with the intent of selling them for a dollar each, but sells only five papers.⁹¹ He spends four of the five dollars on cheeseburgers.⁹² He steals \$2.50 from his friend Junior and uses that money to buy a cigar and two lottery tickets.⁹³ He wins \$100 from his lottery ticket escapade, gifts twenty of that prize to the woman that sold him the tickets, and uses the rest to buy shots at an Indian bar.⁹⁴ He then passes out and is rescued by a police officer that looks after him.⁹⁵ The police officer offers to help prosecute the pawnshop owner, but Jackson declines. The cop then gives him thirty dollars.⁹⁶ Jackson spends twenty-five dollars on breakfast for himself and four homeless Aleut Indians.⁹⁷ It is with the remaining five dollars that Jackson returns to the pawnshop.⁹⁸ The most Jackson could have collected that day was \$130.50, but then Jackson would not have eaten or shared his breakfast and his bounty with his friends and compatriots.

Two property systems (and possibly more) come into contact with each other in "What You Pawn." Jackson, a Spokane Indian, comes from a culture and a community used to sharing, even to one's detriment. Hoarding property and capital, even for a worthy and noble purpose, is difficult. But this property system also values the cultural and personal significance of the dance regalia in a way that does not square with a bank account balance. Comparing that property system (if it could even be called a "property" system) with the Anglo-American system that incorporates the concepts of a pawnbroker and pawnshop is what the Supreme Court could not do in its New York Indian land claim cases. Tribal policymakers, in filling in the bubble of tribal law and tribal governance, should be aware of

these differences. One wonders what the pawnbroker would have done had he known Jackson's full story of the twenty-four hours.

D. "The Sin Eaters"

In 2005, the popular online fake news source, *The Onion*, published an article called "Area Cherokee in Violation of Indian Removal Act of 1830,"⁹⁹ a story about how the United States military had issued an arrest warrant for a Cherokee family living in present day Georgia, who seemed to have forgotten that they were living in Georgia in violation of federal law. The military planned to forcibly remove the family to the Cherokee reservation in Oklahoma.¹⁰⁰ The story is an obvious satire of American Indian policy, but there is a part inside many Indians that believes this story.

Alexie's "The Sin Eaters" is a fictional story about the United States military removing Indian people from their homes, and it is without a doubt the horror story to end all horror stories for modern Indian people.¹⁰¹ In "The Sin Eaters," Indians from around the country awaken one morning to the sound of military aircraft and jackboots as military personnel invade Indian Country.¹⁰² They divide the individual Indians by blood quantum and tribe, load them into military transport at gunpoint, and beat or kill those who resist or run.¹⁰³ The reason for this declaration of war and forced march to yet another concentration camp is never explained, except with reference to a "contamination."¹⁰⁴

"The Sin Eaters" can be divided into five allegorical parts. First, the divide and conquer by government force reads as an allegory for the bureaucratic nightmare of Indian affairs when the Bureau of Indian Affairs controlled Indian Country like an authoritarian dictatorship. The Bureau's local agents often forced Indian tribes to enact laws creating a link between political and property rights and blood quantum.¹⁰⁵ In some circumstances, the Bureau considered Indians with a white parent or grandparent to be "competent," meaning that they were legally capable of disposing of their property to the advantage of the government agent or to a white land

speculator.¹⁰⁶ In other instances, the Bureau considered Indians with an Indian parent or grandparent to be “incompetent,” meaning that the Bureau was legally authorized to dispose of their property—again, to the advantage of the government agent or a white land speculator.¹⁰⁷

Second, the contamination theme of the story can be interpreted as a retelling of the history of Euro-American contagions that eviscerated the indigenous populations from the moment of first contact even up to the beginning of the last century.¹⁰⁸ The twist that Alexie gives this story is that in “The Sin Eaters” the American government appears to be trying to prevent Indians from being contaminated. That twist does not change the outcome, however, as Alexie makes clear that the government is studying and exploiting Indian people for the benefit of the non-Indian people of America.

Third, the government’s placement of Indian people in military compounds is symbolic of the boarding school and missionary system of the nineteenth and twentieth centuries in which the government and church missionaries took Indian children away to boarding schools with an intent to destroy the Indian within—a sinister and vicious form of assimilation.¹⁰⁹ The boarding school symbolism continues with the sexualization of the torture that occurs where the military holds the Indian people. In some ways, “The Sin Eaters” is a parable for American Indian law and policy. Alexie reminds us that at any moment, perhaps without notice, the American government can take away Indian lives and property. That story is the ultimate horror story because, as the tagline for the remake of the film *The Hills Have Eyes* suggests,¹¹⁰ the lucky ones die first. The survivors, the subjects of this governmental and military action, lose their homes, lose their families, lose their souls—all at gunpoint.¹¹¹ The new reservation, the military compound with its torture rooms and isolated sleeping quarters, forces the Indian characters into a worse existence than death.¹¹² One underlying current to the story is the notion that perhaps what is being done

to these Indian people is for the benefit of mankind, or at least to Americans.

Fourth, the new policy of genocide and imprisonment of Indian people is an allegory for the undercurrent of all American Indian law and policy. Indian people must be sacrificed for the greater good of non-Indians and, perhaps later, the survivors. As the doctors take bone marrow from Jonah's hips, they attempt to comfort him with the assertion that Jonah's sacrifice is "saving the world."¹¹³ Similarly, the belief in Manifest Destiny, which resulted in the practical enslavement of Indian people, the destruction of Indian cultures, and the dispossession and exploitation of Indian lands, was also for the benefit of the Americans.¹¹⁴ In Alexie's story, the small Indian preacher reminds the other captives, "[Y]ou're a worm. You're less than a worm to them. You're an exile, you're a leper, you're a pariah, you're a peon, you're nothing to them. Nothing."¹¹⁵ Alexie's story instructs us that the next time the American government comes for Indian people, it will be for much bigger and more desperate reasons.

The fifth and final allegorical component of "The Sin Eaters" to American Indian law and policy is the notion of "measured separatism"—a term used by Charles Wilkinson to explain the public policy of Indian treaties and the reservation system.¹¹⁶ Unlike most other racial, ethnic, and legal minorities, Indians and Indian tribes tended to avoid integration into the greater American populace.¹¹⁷ The melting pot taught in public schools (and since discredited by progressive scholars)¹¹⁸ makes no sense to reservation Indians and is a sad, twisted joke to urban Indians.

Measured separatism lost its cutting edge during the ravages of Manifest Destiny, gold rushes, and the Allotment Era; but, it still retains cutting legal validity, for example, in the notions of tribal sovereignty, the trust relationship, and the political status classification of Indians and Indian tribes.¹¹⁹ "The Sin Eaters" reminds the reader that the intimate relationship between Indians, Indian tribes, and the federal government is a knife that cuts both ways. As the small Indian preacher stated, "[T]hose soldiers,

those people are getting things ready. They've got their own ceremonies, you know?"¹²⁰

And here is the greatest value of "The Sin Eaters" to American Indian leaders and policymakers. It is a reminder that the trust relationship is not about trust, and that tribal sovereignty is a hollow vessel without something powerful to fill it. "The Sin Eaters" is a guidepost, a reminder that tribal law and culture is always about survival and that everything that has come before must instruct and inform tribal leaders about how to proceed.

IV. TRIBAL SOVEREIGNTY, TRIBAL LAW, AND STORIES

In the story "The Search Engine," Alexie states, "Ancient questions [are to be] answered with ancient ceremonies."¹²¹ The "ancient" questions are about political membership, leadership, government, religion, and punishment—all of which federal Indian law refers to as internal or intramural affairs. The old stories, assuming Indian people and tribal governments listen, should offer a great deal to the answering of these questions. Professor John Borrows, an Anishinaabe Indian from Canada, writes about how the old stories, such as trickster tales, could form the basis for many tribal common law doctrines.¹²² For example, Professor Borrows finds the underlying reasons for requiring consultation with all affected communities before making decisions affecting the environment in the Anishinaabe trickster story, "The Duck Dinner."¹²³

The converse to "ancient" questions and stories are modern questions and stories. Alexie seems to be suggesting that the new questions must be answered with new stories. Corliss Joseph does not take to vision quests, but instead "negotiate[s] her way through a colonial maze . . . [with] good credit and . . . a Visa card."¹²⁴ Harlan and Corliss cry together in the back of a used book store, creating an "original ceremony" because "[e]very ceremony has to be created somewhere . . ." ¹²⁵ Alexie's characters perform ceremonies with every little action they take that reminds them they are American Indians. Some are significant and others, most others, are not.

But it is the insignificant events in history that can become important precedents in law.

These modern stories can be catalysts for change and development of an indigenous tribal law. Maybe stories about people like Corliss Joseph's lost bird will encourage or persuade tribal governments to amend their membership criteria or rethink the notion of tribal membership altogether. Maybe stories about the dance regalia of Jackson Jackson's grandmother will influence tribal cultural property law. Indians are living stories every moment of every day, and these stories can be influential and useful to the development of tribal law.

In 2003, Sherman Alexie released his film, *The Business of Fancydancing*, in New York City and other major cultural markets. Alexie never found a major distributor for the film, which is about a gay Indian poet, and instead released it on his own. The critics did not dislike it, but they did not like it as much as they liked Alexie's previous film, *Smoke Signals*, which received wide distribution, excessive promotion, and critical acclaim. Months prior to the official release date of *The Business of Fancydancing*, the Bay Theater in Suttons Bay, Michigan, four miles from Peshawbestown, acting in accordance with local demand, asked for and received a print of the film. They showed it to standing-room-only crowds packed with Michigan Anishinaabeg for a week, during which Alexie made an appearance at a local school. Like *Smoke Signals*, as critics noted, *The Business of Fancydancing* is full of in-jokes and references that Indian people from all over North America understand. They say you can tell the Indians from the non-Indians by who is laughing at some of the stories.

But these stories are more than in-jokes. These stories are commentary and literature about Indian people today—Indian people who grew up driving beat-up Indian cars but now own Hondas; Indian people who once lived on natural gas and oil royalties but now live off of food stamps; Indian people who lived in tar paper shacks as children but now work in the tribal forestry and natural resources department; and Indian people who grew up

under a business council created by a model IRA constitution, and who still live under the auspices of that government and that constitution. If you watch Indian people watching Alexie's (and others') films, the parts where they are not laughing are as important as the parts where they are laughing.

These stories help Indian people survive. These stories help Indian people learn from each other. And Indian people *are* paying close attention to these stories. They are written for us, by us.

V. CONCLUSION

From the east, Indian people look to the south next. The south represents a time of growth, passion, and maturity. The creative labors of earlier times begin to bear fruit. Many Indian people believe that the south represents fire, with both destroying and cleansing properties. South is the direction of fuller understanding.

Tribal governments—and the Indian people that operate them and hold them accountable—must develop a law and tradition of governance that learns from the experiences of individual Indian people and communities, making the new tribal law harmonize with the new (and old) stories of Indian people. Fundamental questions, such as who Indian people are in a legal sense under tribal law, must be answered in light of the modern experiences of Indian people, not the laws and traditions imposed by outsiders.

Literature informs and influences law and culture in subtle but significant ways. Indian people and tribal governments should learn from their own literature as well.

Miigwetch.

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² Other legal scholars have analyzed some of Sherman Alexie's stories or borrowed images from his films. *E.g.*, Barbara Ann Atwood, *Flashpoints Under the Indian Child Welfare Act: Toward a New Understanding of State Court Resistance*, 51 EMORY L.J. 587, 605 n. 73 (2002) ("Sherman Alexie's John Smith is a man struggling to regain a lost identity after his Native heritage disappeared when a white couple adopted him." (citing SHERMAN ALEXIE, INDIAN KILLER (1996))); N. Bruce Duthu, *Incorporative Discourse in Federal Indian Law: Negotiating Tribal Sovereignty Through the Lens of Native American Literature*, 13 HARV. HUM. RTS. J. 141, 145 (2000) (analyzing several stories from Alexie's first collection of short stories (citing SHERMAN ALEXIE, THE LONE RANGER AND TONTO FISTFIGHT IN HEAVEN (1993))); Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 5 MICH. J. RACE & L. 847, 865 (2000) (noting the element of silence in one of Alexie's stories (citing SHERMAN ALEXIE, *Dear John Wayne*, in THE TOUGHEST INDIAN IN THE WORLD 189 (2000))); Frank Pommersheim, *Coyote Paradox: Some Indian Law Reflections From the Edge of the Prairie*, 31 ARIZ. ST. L.J. 439, 479 (1999) (quoting Alexie's famous formula, "Survival = Anger x Imagination. Imagination is the only weapon on the reservation.") (quoting ALEXIE, THE LONE RANGER AND TONTO FISTFIGHT IN HEAVEN, *supra*, at 150)); Sumayyah Waheed, *Limiting Ourselves: A Response to Elbert Lin's "Identifying Asian America"*, 12 ASIAN L.J. 187, 194 n.39 (2000) (describing the main character in Alexie's novel INDIAN KILLER as an example of a person of color who cannot come to terms with his identity and the consequences thereof (citing ALEXIE, INDIAN KILLER, *supra*)); Kevin K. Washburn, *American Indians, Crime, and the Law*, 104 MICH. L. REV. 709, 711-712 n.9 (2006) (describing the Indian car in SMOKE SIGNALS that only drives in reverse (citing SMOKE SIGNALS (Miramax 1998))).

³ See CHARLES WILKINSON, BLOOD STRUGGLE 127 (2005).

⁴ *Williams v. Lee*, 358 U.S. 217, 220 (1959) ("[T]he question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.").

⁵ FELIX S. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 122 (1941) (1988 reprint) (noting that tribal government authority is inherent and may not be divested except through express acts of Congress).

⁶ *Williams*, 358 U.S. at 220.

⁷ Compare *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) (holding that Indian tribes have exclusive and plenary authority to define tribal membership criteria), with *City of Sherrill, N.Y. v. Oneida Indian Nation of N.Y.*, 544 U.S. 197 (2005) (holding that Indian tribes may not extend sovereign authority over newly-acquired lands except in limited circumstances).

⁸ See generally Matthew L.M. Fletcher, *Toward a Theory of Intertribal and Intratribal Common Law*, 44 HOUS. L. REV. 701, 718-32 (2006).

⁹ See Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, in THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR 98, 98-101 (Cherríe Moraga & Gloria Anzaldúa eds., 1981).

¹⁰ See generally Philip P. Frickey, *(Native) American Exceptionalism in Federal Public Law*, 119 HARV. L. REV. 431 (2005); David H. Getches, *Beyond Indian Law: The Rehnquist Court's Pursuit of States' Rights, Color-Blind Justice and Mainstream Values*, 86 MINN. L. REV. 267 (2001); Joseph William Singer, *Canons of Conquest: The Supreme Court's Attack on Tribal Sovereignty*, 37 NEW ENG. L. REV. 641 (2003); Gloria Valencia-Weber, *The Supreme Court's Indian Law Decisions: Deviations from Constitutional Principles and the Crafting of Judicial Smallpox Blankets*, 5 U. PA. J. CONST. L. 405 (2003).

¹¹ See Robert Odawi Porter, *The Inapplicability of American Law to the Indian Nations*, 89 IOWA L. REV. 1595 (2004); Robert Odawi Porter, *Tribal Disobedience*, Syracuse Univ. Public Law Research Paper No. 05-01, available at <http://ssrn.com/abstract=811585> (last visited Nov. 3, 2006).

¹² Robert A. Williams, Jr., *Sovereignty, Racism, and Human Rights: Indian Self-Determination and the Postmodern World Legal System*, in 2 REV. OF CONST. STUD. 146, 154 (David Schneiderman ed., 1995) (“[I]ndigenous claims to ‘sovereignty’ more accurately can be said to comprehend a jurigenerative demand on the part of indigenous peoples to live by a law of their own choosing and creation. An indigenous law, of course, holds the potential of being a law which is separate and distinct from the majority society’s law...”).

¹³ See generally WILKINSON, BLOOD STRUGGLE, *supra* note 3; Kristen A. Carpenter, *Recovering Homelands, Governance, and Lifeways*, 41 TULSA L. REV. 79 (2005) (reviewing WILKINSON, BLOOD STRUGGLE).

¹⁴ See, e.g., KARL N. LEWELLYN & E. ADAMSON HOEBEL, *THE CHEYENNE WAY* 228 (1941); PAUL RADIN, *THE TRICKSTER: A STUDY IN AMERICAN INDIAN MYTHOLOGY* (1956); RENNARD STRICKLAND, *FIRE AND THE SPIRITS: CHEROKEE LAW FROM CLAN TO COURT* (1975).

¹⁵ See CHARLES F. WILKINSON, *AMERICAN INDIANS, TIME, AND THE LAW* 1 (1987) (“On January 12, 1959, the Supreme Court decided *Williams v. Lee* and, in so doing, opened the modern era of federal Indian law.”).

¹⁶ See FRANK POMMERSHEIM, *BRAID OF FEATHERS: AMERICAN INDIAN LAW AND CONTEMPORARY TRIBAL LIFE* 21 (1995) (“[T]he core of the culture was driven underground into a shadow existence.”).

¹⁷ E.g., Devon A. Mihesuah, *Finding Empowerment through Writing and Reading, or Why Am I Doing This?*, 28 AM. INDIAN Q. 97, 98-99 (2004); Joyce Ann Kievit, *A Discussion of Scholarly Responsibilities to Indigenous Communities*, 27 AM. INDIAN Q. 3, 7 (2003) (quoting e-mail from Devon A. Mihesuah to Joyce Ann Kievit (April 16, 2003)).

¹⁸ E.g., Kievit, *supra* note 17, at 28 (quoting e-mail from Clara Sue Kidwell to Joyce Ann Kievit (April 19, 2003)).

¹⁹ See *id.* at 12 (quoting e-mail from Daniel M. Cobb to Joyce Ann Kievit (April 16, 2003)).

²⁰ *Williams v. Lee*, 358 U.S. 217, 220 (1959) (“Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.”).

- ²¹ See Matthew L.M. Fletcher, *The Supreme Court and Federal Indian Policy*, 85 NEB. L. REV. 121, 135-36 (2006).
- ²² *United States v. Clapox*, 35 F. 575, 577 (D. Or. 1888).
- ²³ See RUTH LANDES, OJIBWA SOCIOLOGY 4-52 (1937); BRUCE G. MILLER, THE PROBLEM OF JUSTICE: TRADITION AND LAW IN THE COAST SALISH WORLD 104-08 (2000); Frank G. Speck, *The Family Hunting Band as the Basis of Algonkian Social Organization*, 17 AM. ANTHROPOLOGIST 289 (1915).
- ²⁴ 25 U.S.C. §§ 461-79 (1934).
- ²⁵ See generally COHEN'S HANDBOOK OF FEDERAL INDIAN LAW §§ 3.02[1]-[9], at 135-70 (Nell Jessup Newton et al. eds. 2005 ed.). *E.g.*, Treaty of Washington, 7 Stat. 491, art. I (1836) (identifying the "Ottawa and Chippewa nations of Indians" as the signatory to the treaty, despite the fact that several dozen independent bands negotiated the treaty); see also Treaty of Detroit, 11 Stat. 621, Preamble & art. V (1855) (identifying "the tribal organization of said Ottawa and Chippewa Indians" and attempting to dissolve the organization); *Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Att'y for the W. Dist. of Mich.*, 369 F.3d 960, 961-61 n.2 (6th Cir. 2004) (discussing same).
- ²⁶ *E.g.*, KEITH H. BASSO, WISDOM SITS IN PLACES: LANDSCAPE AND LANGUAGE AMONG THE WESTERN APACHE 40 (1996) ("[O]ral narratives have the power to establish enduring bonds between individuals and features of the natural landscape, and that as a direct consequence of such bonds, persons who have acted improperly will be moved to reflect critically on their misconduct and resolve to improve it."); MILLER, *supra* note 23, at 113 (quoting NORTHWEST INTERTRIBAL COURT SYSTEM, TRADITIONAL AND INFORMAL DISPUTE RESOLUTION PROCESSES IN TRIBES OF THE PUGET SOUND AND OLYMPIC PENINSULA REGION (1991)).
- ²⁷ *E.g.*, BILL DUNLOP & MARCIA FOUNTAIN-BLACKLIDGE, THE INDIANS OF HUNGRY HOLLOW (2004); BASIL JOHNSTON, OJIBWAY CEREMONIES (Bison Books 1990) (1982).
- ²⁸ See, *e.g.*, BASSO, *supra* note 26, at 37-70.
- ²⁹ See POMMERSHEIM, *supra* note 16, at 22-23.
- ³⁰ SHERMAN ALEXIE, THE TOUGHEST INDIAN IN THE WORLD (2000); SHERMAN ALEXIE, TEN LITTLE INDIANS (2003).
- ³¹ See generally JOHNSTON, *supra* note 27.
- ³² See THE TOUGHEST INDIAN IN THE WORLD, *supra* note 30, at 21.
- ³³ See *One Good Man*, in THE TOUGHEST INDIAN IN THE WORLD, *supra* note 30, at 209, 235 (describing making coffee as "a simple ceremony that white people perform just as well and as often as Indians").
- ³⁴ *Indian Country*, in THE TOUGHEST INDIAN IN THE WORLD, *supra* note 30, at 121, 134.
- ³⁵ *Saint Junior*, in THE TOUGHEST INDIAN IN THE WORLD, *supra* note 30, at 150, 188.
- ³⁶ *One Good Man*, in THE TOUGHEST INDIAN IN THE WORLD, *supra* note 30, at 209, 219.
- ³⁷ *The Search Engine*, in TEN LITTLE INDIANS, *supra* note 30, at 1, 22.
- ³⁸ See *id.* at 40-42.
- ³⁹ See COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, *supra* note 25, §§ 3.03[1]-[5], at 171-82.
- ⁴⁰ *E.g.*, CONST. OF THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS art. II (1988).

- ⁴¹ See Carey N. Vicenti, *The Reemergence of Tribal Society and Traditional Justice Systems*, 79 JUDICATURE 134, 139 (1995).
- ⁴² *Id.*
- ⁴³ *Id.*
- ⁴⁴ See generally Wenona T. Singel, *Cultural Sovereignty and Transplanted Law: Tensions in Indigenous Self-Rule*, 16 KAN. J. L. & PUB. POL'Y (forthcoming 2006).
- ⁴⁵ See *Class*, in THE TOUGHEST INDIAN IN THE WORLD, *supra* note 30, at 35.
- ⁴⁶ *Id.* at 38.
- ⁴⁷ *Id.* at 42-46.
- ⁴⁸ *Id.* at 47-56.
- ⁴⁹ *Id.* at 48-49.
- ⁵⁰ *Id.* at 49-52.
- ⁵¹ *Id.* at 53-55.
- ⁵² *E.g.*, Snowden v. Saginaw Chippewa Indian Tribe of Mich., 32 Indian L. Rep. 6047, 6048-49 (Saginaw Chippewa Indian Tribe of Mich. App. Ct. 2005) (linking modern tribal membership disputes to federal government meddling in the tribal constitutional ratification process in the 1930s).
- ⁵³ *E.g.*, Hoffman v. Colville Confederated Tribes, 22 Indian L. Rep. 6127 (Colville Confederated Tribes Indian Reservation Tribal Ct. 1995) (rejecting petitioners claims to membership for failure to prove blood quantum).
- ⁵⁴ See generally AMERICAN INDIAN POLICY REVIEW COMMISSION, 95th CONG., FINAL REPORT (Comm. Print 1977) (describing legal status of terminated and nonrecognized Indians).
- ⁵⁵ *The Search Engine*, in TEN LITTLE INDIANS, *supra* note 30, at 1, 40.
- ⁵⁶ *Id.* at 41.
- ⁵⁷ *Id.* at 52.
- ⁵⁸ *Id.* at 41.
- ⁵⁹ *Id.* at 52.
- ⁶⁰ *Id.* at 12-20.
- ⁶¹ *Id.* at 17-20.
- ⁶² *Id.* at 52.
- ⁶³ JACK CAMPISI, THE MASHPEE INDIANS: TRIBE ON TRIAL (1991) (quoting Mashpee Tribe v. New Seabury Corp., 427 F. Supp. 899 (D. Mass. 1977)).
- ⁶⁴ *The Search Engine*, in TEN LITTLE INDIANS, *supra* note 30, at 9-11.
- ⁶⁵ *Id.* at 13, 14.
- ⁶⁶ See VIRGIL J. VOGEL, INDIAN NAMES IN MICHIGAN 54 (1986).
- ⁶⁷ See JAMES A. CLIFTON, THE PRAIRIE PEOPLE: CONTINUITY AND CHANGE IN POTAWATOMI INDIAN CULTURE 1665-1965, at 229-30 (1977).
- ⁶⁸ See JAMES A. CLIFTON, THE POKAGONS, 1683-1983: CATHOLIC POTAWATOMI INDIANS OF THE ST. JOSEPH RIVER VALLEY 43-51 (1984); R. DAVID EDMUNDS, THE POTAWATOMIS, KEEPERS OF THE FIRE 266 (1978).
- ⁶⁹ See Wenona T. Singel, *Labor Relations and Tribal Self-Governance*, 80 N.D. L. REV. 691, 714-15 (2004).
- ⁷⁰ See JOHN D. HUNTER, MANNERS AND CUSTOMS OF SEVERAL INDIAN TRIBES LOCATED WEST OF THE MISSISSIPPI 255-57 (Ross & Haines, Inc. 1957) (1823).

⁷¹ *E.g.*, Snowden v. Saginaw Chippewa Indian Tribe of Mich., 32 Indian L. Rep. 6047, 6048 (Saginaw Chippewa Indian Tribe of Mich. App. Ct. 2005) (describing the federal government's interference with tribal membership criteria).

⁷² This example is probably not a good one, as the new Pokagon Band Constitution, ratified in 2005, contains very broad adoption allowances. *See* CONST. POKAGON BAND OF POTAWATOMI INDIANS art. V, § 2 (2005).

⁷³ *See* Santa Clara Pueblo v. Martinez, 436 U.S. 49, 55 (1978) (citing Roff v. Burney, 168 U.S. 218 (1897)).

⁷⁴ Joseph William Singer, *Nine-Tenths of the Law: Title, Possession & Sacred Obligations*, 38 CONN. L. REV. 605 (2006).

⁷⁵ *See* City of Sherrill, N.Y. v. Oneida Indian Nation of N.Y., 544 U.S. 197 (2005); *see also* County of Oneida, N.Y. v. Oneida Indian Nation of N.Y. State, 470 U.S. 226 (1985); Oneida Indian Nation of N.Y. v. County of Oneida, N.Y., 414 U.S. 661 (1974).

⁷⁶ Trade and Intercourse Act of 1793, ch. 19, § 8, 1 Stat. 329, 330 (1793) (current version at 25 U.S.C. § 177 (2000)).

⁷⁷ *City of Sherrill*, 544 U.S. at 211-20. *See also* Cayuga Indian Nation of N.Y. v. Pataki, 413 F.3d 266 (2nd Cir. 2005), *cert. denied sub nom.* United States v. Pataki, 126 S. Ct. 2021 (Mem.) (2006); The Seneca-Cayuga Tribe of Okla. v. Town of Aurelius, N.Y., 233 F.R.D. 278 (N.D. N.Y. 2006).

⁷⁸ *City of Sherrill*, 544 U.S. at 217.

⁷⁹ *See What You Pawn I Will Redeem*, in TEN LITTLE INDIANS, *supra* note 30, at 169.

⁸⁰ *Id.* at 171-72.

⁸¹ *Id.* at 172.

⁸² *Id.* at 173-74.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 193.

⁸⁶ *Id.* at 194.

⁸⁷ *E.g.*, Mary Joe Frug, *Rescuing Impossibility Doctrine: A Postmodern Feminist Analysis of Contract Law*, 140 U. PA. L. REV. 1029 (1992); Joseph William Singer, *Sovereignty and Property*, 86 NW. U. L. REV. 1 (1991). *See generally* DOROTHY A. BROWN, *CRITICAL RACE THEORY: CASES, MATERIALS, AND PROBLEMS* (2003).

⁸⁸ *See* Singel, *supra* note 44. *E.g.*, Order and Opinion, Turtle Mountain Judicial Board v. Turtle Mountain Band of Chippewa Indians, No. 04-007, at 17-18 (Turtle Mountain Band App. Court 2005) (questioning whether the tribal court should adopt the “unclean hands doctrine”).

⁸⁹ *See, e.g.*, Kristen A. Carpenter, *A Property Rights Approach to Sacred Sites Cases: Asserting a Place for Indians as Nonowners*, 52 UCLA L. REV. 1061, 1133 (2005); Angela R. Riley, “Straight Stealing”: *Towards an Indigenous System of Cultural Property Protection*, 80 WASH. L. REV. 69, 76-82 (2005).

⁹⁰ *See What You Pawn I Will Redeem*, in TEN LITTLE INDIANS, *supra* note 30, at 169, 174.

⁹¹ *Id.* at 177-78.

⁹² *Id.* at 179.

⁹³ *Id.* at 179-80.

⁹⁴ *Id.* at 180-82.

⁹⁵ *Id.* at 185-90.

⁹⁶ *Id.*

⁹⁷ *Id.* at 191-92.

⁹⁸ *Id.* at 193.

⁹⁹ *Area Cherokee in Violation of Indian Removal Act of 1830*, THE ONION, Dec. 7, 2005-Dec. 13, 2005, Issue 41•49, <http://www.theonion.com/content/node/43197> (last visited Nov. 3, 2006).

¹⁰⁰ *Id.*

¹⁰¹ *The Sin Eaters*, in THE TOUGHEST INDIAN IN THE WORLD, *supra* note 30, at 76.

¹⁰² *Id.* at 82-83.

¹⁰³ *Id.* at 82-101.

¹⁰⁴ *Id.* at 93.

¹⁰⁵ See generally Paul Spruhan, *A Legal History of Blood Quantum in Federal Indian Law to 1935*, 51 S.D. L. REV. 1 (2006).

¹⁰⁶ See, e.g., Wenona T. Singel & Matthew L.M. Fletcher, *Power, Authority, and Tribal Property*, 41 TULSA L. REV. 21, 28-29 (2005) (discussing Indian land dispossession using this method on South Fox Island and Burt Lake in Michigan).

¹⁰⁷ E.g., *id.* at 28 (discussing Indian land dispossession using this method in the Great Lakes region).

¹⁰⁸ See generally JOYCE E. CHAPLIN, SUBJECT MATTER: TECHNOLOGY, THE BODY, AND SCIENCE ON THE ANGLO-AMERICAN FRONTIER, 1500-1676, at 182-83 (2001).

¹⁰⁹ E.g., JAMES M. MCCLURKEN, GAH-BAEH-JHAGWAH-BUK—THE WAY IT HAPPENED: A VISUAL CULTURE HISTORY OF THE LITTLE TRAVERSE BAY BANDS OF ODAWA 35-41 (1991) (describing the impact of the boarding school system on Odawa culture).

¹¹⁰ THE HILLS HAVE EYES (Twentieth Century Fox 2005).

¹¹¹ *The Sin Eaters*, in THE TOUGHEST INDIAN IN THE WORLD, *supra* note 30, at 76, 83-85.

¹¹² *Id.* at 98-120.

¹¹³ *Id.* at 115.

¹¹⁴ See ROBERT J. MILLER, NATIVE AMERICA, DISCOVERED AND CONQUERED: THOMAS JEFFERSON, LEWIS & CLARK, AND MANIFEST DESTINY (2006) (the story of Manifest Destiny as told by an American Indian legal scholar).

¹¹⁵ *The Sin Eaters*, in THE TOUGHEST INDIAN IN THE WORLD, *supra* note 30, at 76, 106.

¹¹⁶ WILKINSON, *supra* note 15, at 14.

¹¹⁷ See VINE DELORIA, JR., CUSTER DIED FOR YOUR SINS: AN INDIAN MANIFESTO 168-71, 266-67 (Univ. of Okla. Press 1988) (1969).

¹¹⁸ See Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241, 1318 n.403 (1993) (quoting Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 400-01 (1978) (Marshall, J. concurring in judgment)); Gary Peller, *Race Consciousness*, 1990 DUKE L.J. 758 (1990).

¹¹⁹ See COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 4.01[1]-[2][f], at 204-20 (Nell Jessup Newton et al. eds. 2005) (inherent tribal sovereignty); *id.* § 5.05[4], at 438-42

(trust relationship); *Morton v. Mancari*, 417 U.S. 535, 552-54 n.24 (1974) (political status).

¹²⁰ *The Sin Eaters*, in *THE TOUGHEST INDIAN IN THE WORLD*, *supra* note 30, at 76, 105-06.

¹²¹ *The Search Engine*, in *TEN LITTLE INDIANS*, *supra* note 30, at 1, 27.

¹²² JOHN BORROWS, *RECOVERING CANADA: THE RESURGENCE OF INDIGENOUS LAW* 13-23, 46-54 (2002).

¹²³ *Id.* at 46-54 (citing RICHARD M. DORSON, *BLOODSTOPPERS & BEARWALKERS; FOLK TRADITIONS OF THE UPPER PENINSULA* 49-50 (1952)).

¹²⁴ *The Search Engine*, in *TEN LITTLE INDIANS*, *supra* note 30, at 1, 27.

¹²⁵ *Id.* at 49.